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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 159, Miscellaneous

**EX PARTE GENE MITCHELL GRAY, LINCOLN
ANDERSON BLAKENEY, JOSEPH HUTCH PAT-
TERSON AND JACK ALEXANDER**

**REPLY TO THE MOTION FOR LEAVE TO FILE PETI-
TION FOR WRIT OF MANDAMUS, PETITION FOR
A WRIT OF MANDAMUS, AND BRIEF IN SUPPORT
OF MOTION AND PETITION FOR MANDAMUS.**

**JOHN J. HOOKER,
K. HARLAN DODSON, JR.,**
Counsel for Respondents.

WALKER & HOOKER,
Of Counsel.

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The respondents, The Board of Trustees of The University of Tennessee, etc., et al., state the following matters and grounds in reply to petitioners' motion herein for leave to file a petition for writ of mandamus:

I

Petitioners seek a writ of mandamus from this Honorable Court directed to the Honorable the United States District Court for the Eastern District of Tennessee, Northern Division, the Honorable Shackelford Miller, Jr., Circuit Judge of the United States Court of Appeals for the Sixth Circuit, the Honorable Leslie R. Darr and the Honorable Robert L. Taylor, Judges of the United States District Court for the Eastern District of Tennessee to show cause

on a day to be fixed by this Court why mandamus should not issue from this Court directing said Honorable Shackelford Miller, Jr., Circuit Judge of the United States Court of Appeals for the Sixth Circuit, and the Honorable Leslie R. Darr and the Honorable Robert L. Taylor, Judges of the United States District Court to vacate and expunge from the record and the order of April 13, 1951 dissolving the three-judge court and the subsequent action of Honorable Robert L. Taylor in which he proceeded to pass upon the issues involved in this case.

As was pointed out in the opinion filed as Appendix A to petitioners' motion, petition and brief and as was held in the cases of *Ex Parte Bransford*, 310 U. S. 354; *Ex Parte Collins*, 277 U. S. 565; *Rescue Army v. Municipal Court*, 331 U. S. 549, 568-574, the case of Gene Mitchell Gray, et al. v. The Board of Trustees, etc., from which petitioners have sought to appeal directly to this Honorable Court, was not a proper case for the consideration of a three-judge court.

II

The opinion of the District Court of three Judges for the Eastern District of Tennessee, filed on April 13, 1951 (Attached as Appendix A to petitioners' motion, petition and brief), in this cause and the order entered pursuant thereto shows that the question involved in that case was the alleged unjust discrimination against the plaintiffs under the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, and not the constitutionality of certain statutes of the State of Tennessee, or the order of the Board of Trustees of The University of Tennessee, referred to in the pleadings, and, accordingly, no question was properly presented for determination by a three-judge court.

III

The record in the case of Gene Mitchell Gray, et al., v. The Board of Trustees, etc., referred to in petitioners' motion, petition and brief further discloses that the defendants prayed no appeal from the opinion and judgment of the District Court for the Eastern District of Tennessee, Northern Division, filed on April 20, 1951 (97 F. Supp. 463), and, consequently, petitioners' application for a mandamus herein is now moot, the said opinion and judgment of April 20, 1951, having become final.

WHEREFORE, the respondents respectfully submit that petitioners' motion herein should be denied and no writ of mandamus issued.

Dated: October 8, 1951.

Respectfully submitted,

K. HARLAN DODSON, JR.,
JOHN J. HOOKER,
By K. HARLAN DODSON, JR.,
Attorneys for Respondents.

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